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IN THE

Supreme Court of the United States

OCTOBER TERM, 1947.

No. 695.

UNITED STATES OF AMERICA,
Appellant,

v.

CONGRESS OF INDUSTRIAL ORGANIZATIONS,
PHILIP MURRAY, Officer Thereof,
Respondents.

BRIEF OF INTERNATIONAL ASSOCIATION OF MACHINISTS AS *AMICUS CURIAE.*

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Statement.

Pursuant to leave granted by this Court and the consent of the parties hereto, the International Association of Machinists (herein called the I. A. of M.) submits this brief as *amicus curiae* in support of respondents' contention that Section 304 of the Labor-Management Relations Act of 1947 is unconstitutional and void.

Interest of the I. A. of M.

The I. A. of M. is one of the five largest labor organizations in the United States, having a membership of over 600,000. The I. A. of M. and its constituent district and local lodges negotiate and consummate approximately

11,000 labor agreements with management each year governing the wages, hours and working conditions of its membership. Its members are employed in the metal trades, on the railroads, in the aircraft industry and in the shipyards and thus perform essential functions in the most vital industries in the country.

Representing such a large segment of organized labor, the I. A. of M. has a special responsibility to its membership and to the country as a whole to state publicly its position in connection with Section 304 of the Labor-Management Relations Act of 1947, and to urge upon this Court that because this Section strikes a mortal blow at the freedoms of speech, press and assembly, and threatens the very foundations of representative government, it should be declared null and void.

The Statute Involved.

"Sec. 304. Section 313 of the Federal Corrupt Practices Act, 1925 (U. S. C., 1940 edition, title 2, sec. 251; Supp. V, title 50, App., sec. 1509), as amended, is amended to read as follows:

'Sec. 313. It is unlawful for any national bank, or any corporation organization by authority of any law of Congress, to make a contribution or expenditure in connection with any election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office, or for any corporation whatever, or any labor organization to make a contribution or expenditure in connection with any election at which Presidential and Vice Presidential electors or a Senator or Representative in, or a Delegate or Resident Commissioner to Congress are to be voted for, or in connection with any primary election or political convention or caucus held to

select candidates for any of the foregoing offices, or for any candidate, political committee, or other person to accept or receive any contribution prohibited by this section. Every corporation or labor organization which makes any contribution or expenditure in violation of this section shall be fined not more than $5,000; and every officer or director of any corporation, or officer of any labor organization, who consents to any contribution or expenditure by the corporation or labor organization, as the case may be, in violation of this section shall be fined not more than $1,000 or imprisoned for not more than one year, or both. For the purposes of this section "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work'" (*Public Law 101, 80th Congr., 1st Session*).

The Facts.

The indictment in this case resulted from the expenditure of union funds in connection with the publication in the July 14, 1947 issue of the "CIO News" of an editorial endorsing a candidate for Congressional office, signed by respondent Philip Murray. It is alleged in the indictment that respondent Congress of Industrial Organizations (herein called the CIO) made certain expenditures from its general funds in publishing and circulating this issue of the "CIO News", that respondent Murray knew of and consented to this action and that both respondents thereby violated Section 304 of the Act.

On February 20, 1948, respondents moved to dismiss the indictment, and on March 15, 1948, this motion was

granted by the United States District Court for the District of Columbia (MOORE, *D. J.*).

The case is here on certiorari.

I.

Section 304 abridges freedom of speech and press and the right of assembly and petition, in violation of the First Amendment.

A. Labor organizations are within the protection of the First Amendment.

The freedoms guaranteed by the First Amendment are not the special property of any particular group. They are available alike to individuals, corporations, and unincorporated associations. This obvious fact, however, was apparently overlooked by Congress when it enacted Section 304 of the Labor-Management Relations Act of 1947, for in so doing it stripped the freedom of expression from millions of organized workingmen.[1]

There is no liberty more basic and more important to workingmen than their freedom to express themselves concerning the affairs of the day. The ability to advocate support of favorable legislation and candidates for office

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[1] "That the State has power to regulate labor unions with a view to protecting the public interest is * * * hardly to be doubted. They cannot claim special immunity from regulation. Such regulation, however, whether aimed at fraud or other abuses, must not trespass upon the domains set apart for free speech and free assembly." (*Thomas* v. *Collins*, 323 U. S. 516, at p. 532.)

* * * *

"Necessarily correlative was the right of the union, its members and officials * * * to discuss with and inform the employees concerning matters involved in their choice. These rights of assembly and discussion are protected by the First Amendment." (*Id.*, at p. 534.)

who favor such legislation is an integral part of their economic struggle for better wages, hours and working conditions. It is inseparably identified with their daily need to feed, clothe and shelter themselves and their families.

Without this liberty, much of the statutory law which exists today to protect labor's rights might never have been enacted. Because of labor's exercise of its right of freedom of speech, press and assembly, our country has made great forward strides since the days when organized groups of workers were considered criminal conspiracies. Labor unions have been in the forefront of the campaigns for such measures as child labor laws, unemployment insurance, social security legislation, wage and hour laws, rent control, price control, fair employment practices and the like. The very right of workingmen to organize and bargain collectively is a monument to labor's exercise of its liberty of expression. Higher wages won at the bargaining table would mean little if trade unions could not also urge the passage of socially beneficial legislation of the type mentioned.

But freedom of speech and press in areas such as these is meaningless if it cannot operate on a group basis. It is precisely for the purpose of making such freedoms more effective that laboring men organize into unions. As individuals, they are helpless economically and politically.[2] In a union they are part of a voluntary group from which they derive collective strength.

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[2] "Labor unions * * * were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and his family * * *. Union was essential to give laborers opportunity to deal on equality with their employer." [*American Steel Foundries* v. *Tri-City Central Trades Council* (1921) 257 U. S. 184, at p. 209.] See also *N. L. R. B.* v. *Jones & Laughlin Steel Corp.* (1936) 301 U. S. 1, at p. 33.

"E pluribus unum" is stamped on every United States coin for no idle purpose. The ability of individuals to join together for their common good is the foundation stone on which our democracy rests.

Why, then, should workingmen not have the right to pool their resources to avail themselves of the press, the radio, the amphitheatre and the meeting hall, to endorse or oppose legislation which affects their daily bread and butter; to publicize the voting records of candidates for office on matters affecting labor; to advise their fellows as to who are their friends and who their enemies; to educate and inform concerning laws which will affect them for good or ill? They have indeed such a right—in fact they have a duty to do so.

Such group activity is not denied to associations of employers. Unincorporated associations with an anti-labor point of view have consistently played a leading role in our political and legislative processes.[3] To strip unions of these protected rights, as Section 304 has done, is to leave the fate of legislation and the result of elections in the hands of groups who, though numerically small, are powerful financially and have demonstrated through the years that labor can ill afford to trust its interests to them.[4]

The nationwide political battle over the proposed passage of the Labor-Management Relations Act is still fresh in mind. United employer groups on the one side and labor groups on the other, engaged in meetings and demonstrations, sent delegations to Congress, testified

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[3] See Chase, *Democracy under Pressure* (1945); Crawford, *The Pressure Boys* (1939); Gruening, *The Public Pays* (1931).

[4] "The influence of great wealth in party activity is persistent and at times unchallenged; it is kept in check only by the challenge of other groups with power enough to rise from time to time and raise an effective barrier to the progress of wealth." Key, *Politics, Parties and Pressure Groups* (1942); p. 49.

at hearings, and advertised their point of view in the newspapers and over the radio. Had Section 304 already been the law at that time, however, only one point of view could have been expressed. Supporting the bill with impunity we would have heard the voices of all unincorporated associations of manufacturers, chambers of commerce and anti-labor groups generally, not to speak of individuals of wealth such as large corporate stockholders. But from the side of labor there would necessarily have been silence.

This is precisely the situation today. The Labor-Management Relations Act is a self-perpetuating instrument of oppression which silences the voices of those most interested in its repeal. Moreover, in curbing labor's freedom of speech it effectively prevents unions from campaigning for the passage of a great variety of other still-needed legislation beneficial to workingmen and to society in general.

The First Amendment protects employers, say the courts. [*N. L. R. B.* v. *Virginia Electric & Power Co.* (1941), 314 U. S. 469, 477; *N. L. R. B.* v. *American Pearl Button Co.* (C. C. A. 8, 1945), 149 F. (2d) 556; *N. L. R. B.* v. *J. L. Brandeis* (C. C. A. 8, 1944), 145 F. (2d) 556; *N. L. R. B.* v. *American Tube Bending Co.* (C. C. A. 2, 1943), 134 F. (2d) 993, cert. den. 320 U. S. 768.] We do not dispute that it does and should. But we also urge that the Constitution protects labor unions to the same extent; no more and no less.

B. In prohibiting "expenditures in connection with any election" Section 304 prohibits the free expression of political opinion.

While Section 304 on its face does not purport to restrict the freedom of speech, press and assembly of labor organizations, it is in fact a thinly-disguised device to prevent such organizations from engaging in any effective political activity. The ban on "expenditures" is a ban on the activity itself.[5]

The protected freedom of political expression does not exist in *vacuo*. It would be a meaningless freedom indeed were it untranslated into the realities of the everyday world. The peaceful expression of political opinion, the advocacy of acceptance or rejection of a particular piece of legislation or the candidacy of a particular individual, would be impotent acts were it not for the availability of the media of mass communication.

It is impossible to determine how a labor organization can have access to these media without the expenditure of funds therefor. The bare "right" without the accompanying freedom to exercise it in the only manner in which it can be exercised is, in effect, a denial of the right. The Section makes such expenditure a criminal act, with attendant penalties of fine and possible imprisonment. By so doing, it effectively bars such organizations from the use of all the effective devices for the dissemination of political opinion.

Under Section 304, a labor union may not buy radio time, purchase a newspaper advertisement, or distribute handbills, to urge the defeat of a Congressional candidate whom it deemed hostile to labor's interests. It may not invite a candidate to address its membership in a hired

5. While "contributions" also fall under the statutory prohibition, they are not involved in the case at bar. There is no claim in this case that respondents donated sums of money to any political party or candidate.

meeting hall, nor could it use such hall for the purpose of holding a political debate at which all candidates appeared. It could not publish in its own newspaper or monthly magazine (as in the case at bar) its advocacy of a particular political candidate, and would be prohibited from analyzing the voting records of various candidates for federal election even were it to refrain from outright endorsement or rejection of their candidacy.[6]

In *Bowe* v. *Secretary of the Commonwealth* (Mass., 1946), 320 Mass. 230, a proposed State enactment strikingly similar to Section 304 was held unconstitutional. The proposed law provided in part that "no labor union or any person acting in behalf thereof shall directly or indirectly give, pay, expend or contribute, any money or other valuable thing in order to aid, promote or prevent the nomination or election of any person to public office, or to aid, promote or antagonize the interests of any political party, or to influence or affect the vote on any question submitted to the voters." The Court stated that in barring union expenses in connection with elections, the proposed law deprived unions of any substantial and effective political activity (320 Mass., at p. 252):

"* * * under the proposed law the political activities of labor unions are not regulated or curbed but are

6 "Mr. PEPPER. Suppose a labor union felt that a candidate for office was unfair to labor, and that labor union wished to put out a pamphlet to advise its members about the labor record of the candidate. I ask the Senator from Ohio whether that would be forbidden as an expenditure by a labor organization in respect to a candidate or an election under the proposed act?

"Mr. TAFT. Yes, I think it would be.

"Mr. PEPPER. So a workingman's organization would be deprived of the power even of advising its membership of the antilabor record of a man who might be a candidate for public office?

"Mr. TAFT. Correct * * *." (*Congr. Rec., Sen.*, June 5, 1947, p. 6395.)

substantially destroyed. Deprived of the right to pay any sum of money for the rental of a hall in which to hold a public rally or debate, or for printing or circulating pamphlets, or for advertising in newspapers, or for buying radio time, a union could not carry on any substantial and effective political activity. It could not get its message to the electorate. Its rights of freedom of the press and of peaceable assembly would be crippled * * *."

The effect of the prohibition on "expenditures" contained in Section 304 is analogous to the restrictive effect of so-called "regulatory" laws which in practice limit the freedom of speech and press. This Court has always been astute to strike down such laws. [*Thomas* v. *Collins* (1946), 323 U. S. 516; *Martin* v. *City of Struthers* (1943), 319 U. S. 141; *Schneider* v. *State* (1939), 308 U. S. 147; *Hague* v. *CIO* (1939), 307 U. S. 496; *Lovell* v. *Griffin* (1938), 303 U. S. 444; *Grosjean* v. *American Press Company, Inc.* (1936), 297 U. S. 233.]

In *Thomas* v. *Collins*, *supra*, 323 U. S. 516, this Court held unconstitutional a Texas statute which required union organizers to register with the Secretary of State and procure an organizer's card before soliciting members, on the ground that the law in effect restricted the right of free speech and discussion. In *Martin* v. *City of Struthers*, *supra*, 319 U. S. 141, an ordinance prohibiting the ringing of doorbells by persons distributing handbills was held a violation of free speech and press. In *Schneider* v. *State*, *supra*, 308 U. S. 147, the requirement of a license for the distribution of circulars by canvassers, purportedly designed to prevent littering of the streets, was held unconstitutional for the same reason. And in *Lovell* v. *Griffin*, *supra*, 303 U. S. 444, this Court invalidated an ordinance prohibiting the distribution of

literature without the permission of the City Manager as a denial of free speech.

C. Section 304 abridges the right of peaceable assembly and to petition the Government for a redress of grievances.

Any effective political activity, as we have shown, requires the expenditure of money. The right to assemble peaceably and to petition the Government for redress of grievances are within the specific protections of the First Amendment, and the exercise of such rights is a normal and necessary political activity.

In the present era, "petitioning the Government" takes the form of mass delegations to individual Congressmen, organized mail or telegram campaigns to members of Congress, or perhaps even the giving of testimony before Congressional Committees considering proposed legislation. In the broadest sense, this right also includes the right to appeal to the electorate to elect persons to office who may redress the grievances caused by their predecessors.

Here, too, the right is a meaningless one unless labor unions can educate and inform their membership concerning the issues involved. Most unions have research and education departments whose very function this is. Inability to disseminate the information to the membership would therefore nullify the right of petition for redress of grievances.

Section 304 bars all such activity on the part of a union. In so doing, it violates the First Amendment:

> "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public

affairs and to petition for a redress of grievances." [*United States* v. *Cruikshank* (1876), 92 U. S. 542, at p. 552.]

D. The vagueness of the Statute renders it constitutionally defective.

The language of Section 304 is so vague and all-inclusive that its effect is to curb even activity that might not be held to be within its ambit. Fear by unions that a given "expenditure" might be held to be "in connection with an election" and thus subject them to criminal prosecution is so inhibiting as to paralyze political expression completely.

As we shall subsequently show, *infra*, the legislative history of the Labor-Management Relations Act of 1947 demonstrates utter confusion among the legislators themselves as to the particular types of expenditures that would fall under the ban of Section 304. Suffice it to say for the moment, that Senator Taft himself, proponent of the law in question, recently conceded that the Section "might be ambiguous".[7]

Such concession was not necessary to demonstrate the ambiguity. What constitutes expenditures "in connection with an election" a union must perforce leave to the *ex post facto* determination of a court which must then decide for the first time whether or not the activity was within the coverage of the law. An "election" cannot be artificially segregated from all the political steps that have preceded it, such as the conventions, the campaigns, and the formulation of platforms and issues. Who is to say where it begins or ends? Moreover, even post-election expenditures might well come under the statutory prohibition, where, for example, a union publishes an edi-

[7] *New York Herald Tribune*, Feb. 26, 1948, p. 2, col. 5.

torial in its newspaper deploring or approving the election results.[8]

Were this not a sufficient ambiguity, the use of the word "expenditure" brings up a host of additional confusions to confront already-bewildered minions, which, we may assume, would be loath to commit a Federal crime. A special committee to investigate Senatorial campaign expenditures in 1946 reported, for example, that the definition of "expenditure" as well as "contribution" as contained in the "Corrupt Practices Act" was vague and indefinite and that "failure to further prescribe within more exact limits the nature of each has consistently caused confusion * * *."[9]

A statute limiting freedom of expression which is so vague that it fails to give fair notice of what acts will be punished is unconstitutional as a violation of freedom of speech and press. [*Winters* v. *People of the State of New York* (U. S. Supr. Ct., Mar. 29, 1948, not yet officially reported); *Thomas* v. *Collins*, *supra*, 323 U. S. 516, 536-7; *Thornhill* v. *Alabama* (1940), 310 U. S. 88; *Herndon* v. *Lowry* (1937), 301 U. S. 242; *Near* v. *Minnesota* (1931), 283 U. S. 697, 712; *Stromberg* v. *California* (1931), 283 U. S. 359, 369.]

In *Winters* v. *People of the State of New York*, *supra*, this Court held invalid a penal statute of New York State

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8 "Mr. TAFT. The question as to whether it is in connection with an election I suppose depends on how close it is to the election; how closely it is tied in with something which is a direct issue of the election." (*Congr. Rec., Sen.*, June 5, 1947, p. 6605.)

Senator Taft offered no assistance, however, in determining how to test the "closeness" with which the activity is "tied in" with a "direct issue" of the election.

9 *Report of the Special Committee to Investigate Senatorial Campaign Expenditures, 1946* (Sen. Rep. No. 1, Pt. 2, 80th Cong., 1st. Sess.)

which made it a misdemeanor to sell "any book * * * or other printed paper * * * principally made up of * * * accounts of criminal deeds, or pictures, or stories of deeds of bloodshed, lust or crime." The New York Court of Appeals had construed this language to prohibit the sale of stories "so massed as to become vehicles for inciting violent and depraved crimes against the person". In finding this law unconstitutional, this Court held that the statute was so vague that it failed to give fair notice of what acts would be punished and thereby violated the First Amendment:

> "A failure of a statute limiting freedom of expression to give fair notice of what acts will be punished and such a statute's inclusion of prohibitions against expression, protected by the principles of the First Amendment, violates an accused's rights under procedural due process and freedom of speech or press." (*Winters* v. *People of the State of New York*, *supra*.)

And, prophetically, this Court stated that while in that case it was protecting the liberties of a purveyor of allegedly vulgar magazines, it had in mind that a case might thereafter come before it involving the free expression of political views:

> "* * * despite the difficulties, courts must do their best to determine whether or not the vagueness is of such a character 'that men of common intelligence must necessarily guess at its meaning' * * *. The present case as to a vague statute abridging free speech involves the circulation of only vulgar magazines. The next may call for decision as to free expression of political views in the light of a statute intended to punish subversive activities.
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> * * * * *
>
> "Where a statute is so vague as to make criminal an innocent act, a conviction under it cannot be sus-

tained." (*Winters* v. *People of the State of New York, supra.*)

Thus the vagueness of Section 304 makes its very existence an over-all and continuing threat to the liberty of speech and press of labor organizations, and paralyzes freedom of discussion:

> "Proof of an abuse of power in the particular case has never been deemed a requisite for attack on the constitutionality of a statute purporting to license the dissemination of ideas * * *. It is not merely the sporadic abuse of power by the censor but the pervasive threat inherent in its very existence that constitutes the danger to freedom of discussion." (*Thornhill* v. *Alabama, supra,* 310 U. S. 88 at pp. 97-8.)

E. This restriction on free speech is not justified by any "clear and present danger".

So basic and vital are the liberties guaranteed by the First Amendment that this Court has been most zealous in its scrutiny of enactments which threaten to or curtail these liberties [*Thomas* v. *Collins, supra,* 323 U. S. 516; *Bridges* v. *California* (1941), 314 U. S. 252; *Thornhill* v. *Alabama, supra,* 310 U. S. 88; *Schneider* v. *State, supra,* 308 U. S. 147, 161]. As a further safeguard, this Court has even refused to indulge in the usual presumption of constitutionality where the First Amendment is involved:

> "The usual presumption supporting legislation is balanced by the preferred place given in our scheme to the great, the indispensable democratic freedoms secured by the First Amendment." (*Thomas* v. *Collins, supra,* 323 U. S. 516, 530.)

Only where there is a "clear and present danger" to be met are legislative encroachments upon the absolute freedom of speech and press permissible [*Thomas* v.

Collins, supra, 323 U. S. 516, 529-30; *W. Va. State Board* v. *Barnette* (1943), 319 U. S. 624, 639; *Bridges* v. *California, supra*, 314 U. S. 252, 263; *Thornhill* v. *Alabama, supra*, 310 U. S. 88, 104; *Cantwell* v. *Connecticut* (1940), 310 U. S. 296, 311; *Schenck* v. *United States* (1919), 249 U. S. 47, 52].[10] The substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished:

> "What finally emerges from the 'clear and present danger' cases is a working principle that the substantive evil must be extremely serious and the degree of imminence extremely high before utterances can be punished * * *. For the First Amendment * * * must be taken as a command of the broadest scope that explicit language, read in the context of a liberty-loving society, will allow." (*Bridges* v. *California, supra*, 314 U. S. 252, at p. 263.)

It is fair, then, to ask: by what standards of justice, morality or everyday common sense can the actions of respondents in the case at bar be termed "dangerous"? They advocated in their union newspaper the election of a Congressman who, they felt, would be opposed to the continued existence of the Labor-Management Relations Act of 1947. We fail to perceive any threat to our society in this perfectly democratic and peaceful action.

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[10] "The true boundary line of the First Amendment can be fixed only when Congress and the courts realize that the principle on which speech is classified as lawful or unlawful involves the balancing against each other of two very important social interests, in public safety and in the search for truth. Every reasonable attempt should be made to maintain both interests unimpaired, and the great interest in free speech should be sacrificed only when the interest in public safety is really imperiled, and not, as most men believe, when it is barely conceivable that it may be slightly affected." (Chafee, *Free Speech in the United States*, 1941 ed., p. 35.)

Not only was there no "danger" in the actions of the respondents at bar, but to the best of our knowledge Congress had before it not a scrap of evidence of any over-all "danger" prior to the enactment of the Act which the prohibition of "expenditures" might presumably have been designed to remedy. Nor have we been able to find any evidence relating to political contributions or expenditures which was presented either to the House or Senate committees holding hearings on the proposed legislation as a whole.[11] What concrete evidence Congress did have affirmatively demonstrated the contrary; namely, that no "evil" or "danger" in fact existed.[12]

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[11] On the floor of the House, discussion of the measure was practically non-existent. Prior to the conference between Senate and House managers, the Senate had not even discussed the section, and in fact the section did not appear in the original Senate bill; and the House had heard only one speech, this by Representative MILLER, of California, consisting of a penetrating attack on the section as an unwarranted limitation on the rights of freedom of speech, press and assembly (*Cong. Rec., House*, April 16, 1947, pp. 3580-1).

[12] See remarks of Representative MILLER, of California (*Cong. Rec., House*, April 16, 1947, pp. 3580-1):

> "The evil which the prohibition seeks to correct is in fact nonexistent. The widespread activity of the Political Action Committee of the CIO in the elections of 1943 and 1944 was the signal for a furious campaign against it in the press and in Congress. Demands were made upon Congress for an investigation on the ground that the Corrupt Practices Act as amended by the Smith-Connally Act was being violated. In the midst of this furor the Senate Special Committee to Investigate Presidential, Vice Presidential and Senatorial Campaign Expenditures in 1944 was convened for the purpose of hearing testimony by the chairman of the Political Action Committee. A majority of the special committee found no violation of the Corrupt Practices Act on the part of the Political Action Committee and the Attorney General discovered no violation of the Criminal Provision Act after investigations initiated at the request of several Members of Congress—Senate Report No. 101, page 23, Seventy-ninth Congress, first session."

F. The restriction is not justified as a means of preserving elections from "corruption".

In the Court below, the Government sought to justify the invasion of the basic freedoms here involved on the basis of Congressional control over elections. The suppression of debate is neither a proper nor effective exercise of Congress' power to preserving elections from corruption. On the contrary, only by the encouragement of freedom of expression of political opinion can the purity of elections be maintained (*Thornhill* v. *Alabama, supra,* 310 U. S. 88, 95; *DeJonge* v. *Oregon, supra,* 299 U. S. 353, 365; *Grosjean* v. *American Press Co., Inc., supra,* 297 U. S. 233, 250; *Stromberg* v. *California, supra,* 283 U. S. 359).

> "We must do more than remove the discouragements to open discussion. We must exert ourselves to supply active encouragements" (Chafee, *Free Speech in the United States,* 1941 ed., p. 559).

In *Thornhill* v. *Alabama, supra,* this Court held that the safeguarding of the right to speak as one thinks is essential to free government (310 U. S. 88, at p. 95):

> "The safeguarding of these rights to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government * * *. Abridgement of freedom of speech and of the press, however, impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the processes of popular government."

And in *DeJonge* v. *Oregon*, *supra* (299 U. S. 353, at p. 365):

> "The greater the importance of safeguarding the community the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly, in order to maintain the opportunity for free political discussion, to the end that government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

And in *Grosjean* v. *American Press Co., Inc.*, *supra*, 297 U. S. 233, at p. 250:

> "Since informed public opinion is the most potent of all restraints upon misgovernment, the suppression or abridgement of the publicity afforded by a free press cannot be regarded otherwise than with grave concern."

Where the electoral process is in fact abused or corrupted Congress is not powerless to act. But remedial legislation must be narrowly drawn to correct the abuse itself, not to take away basic rights (*Thornhill* v. *Alabama*, *supra*, 310 U. S. 88, 105; *Schneider* v. *State*, *supra*, 308 U. S. 147, 162; *Lovell* v. *Griffin*, *supra*, 303 U. S. 444, 451; *DeJonge* v. *Oregon*, *supra*, 299 U. S. 353, 364). In *DeJonge* v. *Oregon*, *supra*, 299 U. S. 353, at p. 364, this Court held that "the legislative intervention can find constitutional justification only by dealing with the abuse. The rights themselves must not be curtailed."

Judged by this standard, Section 304 of the Labor-Management Relations Act of 1947 can hardly be said to be "narrowly drawn" to correct a specific abuse. In

preventing a labor organization from spending one penny of its funds to pamphletize, hire a meeting hall, buy radio time, or publish articles in its newspaper or magazine, where the subject matter is "in connection with" a federal election, this enactment has effectively crushed the freedom of speech and press of all labor organizations and their members in the broadest, most comprehensive manner. This is not the correction of an abuse; it is the creation of that very evil.

G. The restriction is not justified as a means of "protecting the minority".

Implicit in certain statements by proponents of Section 304 of the Labor-Management Relations Act of 1947 is the notion that the minority of union members should not be "coerced" into having a portion of their dues payments used to support political measures or candidates to which or to whom they are opposed.[13] This argument rests in part upon the false premise that "political" matters are somehow foreign to the normal functionings and purposes of labor unions, and that while the minority must abide by majority rule in all other union matters, they should not be under similar constraint in matters "political".

This contention is untenable. In the case of *DeMille* v. *American Federation of Radio Artists* (Supr. Ct., Calif., Dec. 16, 1947, not yet officially reported, cert. den. Apr. 19, 1948), which attracted nationwide attention, the Court re-

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[13] "Mr. TAFT. Yes. How fair is it? We will assume that 60 percent of a union's employees are for a Republican candidate and 40 percent are for a Democratic candidate. Does the Senator think the union members should be forced to contribute * * * to the election of someone whom they do not favor?" (*Congr. Rec., Sen.*, June 5, 1947, p. 6598.) (See footnote 5, *supra*: the case at bar does not involve "contributions".)

pudiated this very principle. In that case, the union assessed each of its members one dollar to raise funds in opposition to proposed legislation which it deemed adverse to its interests. Upon DeMille's refusal to pay the assessment on the ground that he personally favored the legislation, he was expelled. The Court, in upholding the union's action, held that a labor organization could legally use its funds to oppose legislation which it deemed harmful:

> "'An unincorporated association, acting in conformity with the will of a majority of its members, has a right to devote its funds to any purpose calculated to promote the objects of the association.'
>
> . . . . . .
>
> "Dues and assessments paid by members to an association and any severable or individual interest therein ceases upon such payment . . . . As such property they are subject to disbursement and expenditure by the association in pursuit of the lawful object or objects for which they were designed to be expended.
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> . . . . . .
>
> "Other organizations, such as Medical Associations, Bar Associations, and the like, have used their funds to support favorable legislation or defeat measures considered in the opinion of the majority or its duly authorized representatives to be inimical to the public interest or to its own welfare. It has never been considered that a difference of opinion within the association as to the use of association funds for such purposes, where otherwise lawful, was a matter for judicial interference." (*DeMille* v. *American Federation of Radio Artists, supra.*)

The premise that political activity is foreign to the normal functionings and purposes of labor unions is also refuted by history and by the facts of everyday

union activity.[14] Today, more than at any other time in our history, it is imperative for unions to engage in political activity along with their basic struggle for improved wages, hours and working conditions. Particularly in recent years, our elected representatives have passed enactment after enactment which affects for good or ill the basic purposes for which unions were organized. Laws have been passed concerning minimum wages, maximum hours, child labor, labor's right to organize, the closed shop, the union shop, deadline dates for contract termination, discharge of employees for union activity, health

[14] An excellent exposition of this basic fact is contained in the following passage from *American Labor Unions* (1945 ed.) by Florence PETERSON, Director of Industrial Relations Division, Bureau of Labor Statistics, U. S. Department of Labor (pp. 173-4):

> "Although the traditional policy of American labor has been not to align itself with any political party, organized labor has always been keenly aware of the fundamental fact that its well-being and even its survival is dependent upon governmental action—legislative, judicial, executive. Basing its course of political action on the principle of 'reward your friends and punish your enemies,' organized labor seeks to keep its members informed about the labor record of candidates for office and to urge them to vote for those who give the greatest evidence of being friendly to labor's interests. When federal and state legislation inimical to workers or unions is threatened, or when specific laws are desired, organized labor exercises its rights under a free democratic government to persuade legislators to act favorably to the interests of its members. Individual unions and the federated bodies conduct publicity campaigns for the purpose of bringing pressure on legislators through their constituents back home, and they send representatives to appear before committee hearings in the national and state capitols.
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> "The regular union periodicals which reach the homes of all union members are naturally an effective means for conveying facts about proposed legislation and opinions on candidates for office. Most of the union journals devote considerable space to discussions of legislative and political affairs as they affect wage earners and organized labor

[Footnote continued on following page.]

and safety in places of employment, picketing, distribution of union leaflets, and unemployment insurance.[15]

To say that labor unions must operate within the framework of such enactments without any right to educate their members as to the benefits or detriments of these laws, to agitate for or against them, or to urge the defeat or re-election of the legislators who passed them, is to ignore political realities and to deprive unions and their members of vital political freedoms. Moreover, the placing of labor organizations in such a political straitjacket will tend to drive them more and more to seek recourse in their economic, as distinguished from their political, remedies.

That political purposes are an inherent and basic part of every labor organization can be shown by an inspection of many union constitutions. The current constitution of

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[Footnote continued from preceding page.]

generally, as well as the particular industries in which their members are employed.

"During the election campaigns many of the union papers, in addition to general discussions of the broad issues at stake, publish each individual candidate's voting or other record on matters pertaining to wage earners and unions. Listings of the candidates are generally under such revealing headings as 'voted right,' 'voted wrong,' 'absent or indifferent.' While some publications go no further than to present the factual history of each candidate's public life, many include specific statements of endorsement or disapproval. For example, the railroad paper *Labor* publishes serial lists of all Congressional candidates who have been endorsed by the chiefs of the standard railroad labor organizations, their judgment being based primarily on the candidates' records with respect to railway legislation, and with studious disregard to political party considerations."

[15] See, for example, U. S. Dept. of Labor, Division of Labor Standards, Bulletin No. 79 (1946), *Federal Labor Laws and Agencies* (72 pages).

the I. A. of M., for example, provides in part as follows (pp. III-IV):

"PLATFORM

"8. To stimulate the political education of the members to understand their political rights and use the ballot intelligently, to the end that the Government may be a government for, of and by the people, and not to be used as a tool to further the ends of combinations of capital for its own aggrandizement.

"9. To urge the membership to vote only for and support candidates who are in favor of this platform and the following political demands: Initiative, Referendum and Recall, National Income Tax Law, National Inheritance Tax Law, National and State Employers' Liability Law; all judges, without exception, to be elected by vote of the people; national law granting pensions for old age or total disability and accident benefits; public ownership of all public utilities; woman suffrage; change of the Constitution of the United States or any country under our jurisdiction which now declares these subjects or questions to be unconstitutional: self-government of cities; abolition of contract system on all public work—city, county, state or national—such work to be done on the day labor plan at union wages."

Political activity of a labor organization is not confined to election time (the purported dividing line prescribed in Section 304), although it is precisely "in connection with elections" that such activity is most potent and effective. Decisions of most labor organizations on political and legislative questions are reached democratically at annual conventions where resolutions are passed concerning such matters. The logical extension of such activity is the support for or opposition to candidates who favor or oppose such specific pieces of legislation.

By what logic, therefore, should majority rule prevail in the former instance and not in the latter? By what logic should union activity in connection with the formulation of a legislative program be legal, and its activity in furthering the cause of candidates who favor its legislative program be made a criminal act with attendant penalties of fine and possible jail sentences?

The presumed vice of union activity "in connection with" a federal election, moreover, cannot be predicated upon advocacy or urging to action as distinguished from education and the dissemination of ideas, for it is well-established that ideas do not lose their constitutional protection because they invite to a course of conduct (*Thomas* v. *Collins, supra*, 323 U. S. 516, 536-7; *Bridges* v. *California, supra*, 314 U. S. 252, 268-9).

In *Thomas* v. *Collins, supra*, this Court held that free trade in ideas includes the opportunity to persuade to action (323 U. S. 516, at p. 537):

> "But the protection . . . extends to more than abstract discussion, unrelated to action. The First Amendment is a charter for government, not for an institution of learning. 'Free trade in ideas' means free trade in the opportunity to persuade to action, not merely to describe facts."

And in *Bridges* v. *California, supra*, it was held that (314 U. S. 252, at pp. 268-9):

> "Since they punish utterances made during the pendency of a case, the judgments below therefore produce their restrictive results at the precise time when public interest in the matters discussed would naturally be at its height.
>
> . . . .

"No suggestion can be found in the Constitution that the freedom there guaranteed for speech and the press bears an inverse ratio to the timeliness and importance of the ideas seeking expression."

But, finally, Section 304 itself belies the pious lamentations of those of its proponents who profess to "protect" the minority of union members from political "coercion". For under its terms, even if the membership had voted unanimously, in the case at bar, to authorize respondents to publish and circulate the editorial for which they have been indicted, the act of respondents would nevertheless have been indictable. The section conclusively presumes the dissent of the minority, even if they in fact assent.

II.

Section 304 is violative of the Fifth Amendment as a denial of due process.

By its terms Section 304 applies to "every corporation or labor organization". Since labor organizations are unincorporated associations, the ban of the Statute falls upon unions alone as distinguished from all other unincorporated associations. For example, associations such as farmer groups, employer groups, Chambers of Commerce, veterans' groups, and medical groups may therefore make "expenditures in connection with an election" with impunity; labor unions, on the other hand, do so at the peril of a fine and imprisonment of their officers.

To extend the ban of Section 304 to all other types of unincorporated associations would only make the violation of the First Amendment more flagrant. On the other hand, to single out arbitrarily one type of unincorporated association, as the section has done, is an unwarranted

discrimination and a violation of the due process guarantee of the Fifth Amendment. [*Hirabayashi* v. *United States* (1943), 320 U. S. 81, 100; *Nebbia* v. *New York* (1934), 291 U. S. 502, 536; *Hurtado* v. *California* (1884), 110 U. S. 516, 535; *United States* v. *Ballard* (U. S. Dist. Ct. W. D. Ky., 1935), 12 F. Supp. 321, 325-6.]

"It is not every act, legislative in form, that is law. Law is something more than mere will exerted as an act of power. It must not be a special rule for a particular person or a particular case." (*Hurtado* v. *California, supra,* 110 U. S. at p. 535.)

"Nothing is more repugnant to the American mind than that, * * * among fellow citizens there should be one law for one individual and a different law for another, relating to the same subject matter * * *." (*United States* v. *Ballard, supra,* 12 F. Supp. at pp. 325-6.)

The gross inequity of the discrimination contained in Section 304 is graphically illustrated by the fact that while the respondents herein are under criminal indictment for endorsing a Congressional candidate in their newspaper, any other unincorporated association with an opposing political point of view, such as a local chamber of commerce, could have bought advertising space opposing this same candidate with impunity.[16]

There is no basis for such a discrimination against labor unions, and as a result of such discrimination an existing

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[16] "Mr. BARKLEY. * * * But suppose the National Association of Manufacturers, out of the funds contributed to it, bought a page in a newspaper; and advertised for or against some candidate, or the United States Chamber of Commerce did the same thing, or the Automobile Chamber of Commerce did the same. Would they be prohibited * * *.

"Mr. TAFT. Of course, if the Chamber of Commerce were a *corporation*, as I think it is, it would clearly be illegal." (*Congr. Rec., Sen.*, June 5, 1947, p. 6596.) (Emphasis supplied.)

inequality is further aggravated. Corporate groups can and do avoid the so-called "Corrupt Practices Act" through evasion devices, through the substantial personal contributions of their officers and directors, and through their control of the media of communications by reason of ownership and advertising. Such avenues of avoidance are, by comparison, unavailable to labor unions.[17]

We have already shown *supra* that no evidence was adduced in the Congressional committee hearings on the proposed Labor-Management Relations Act of 1947 as to the subject-matter of Section 304, and that one searches in vain through the legislative history of this Act to find a shred of evidence justifying this discriminatory attack

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[17] See documented remarks of Rep. MILLER of California (*Congr. Rec., House*, April 16, 1947, p. 3581):

> "There is no justification for treating labor organizations on the same basis with corporations for this purpose. The $5,000 limitation by the Hatch Act upon individual contributions to political committees has been ineffective as against corporations because its officers, directors, and members of families having controlling interests in these corporations can afford to make large contributions distributed to a large number of State, local, and independent committees. Thus we find that 31 members of the du Pont family contributed $109,832.83 to various political organizations for political purposes. Five members of the McCormick family contributed $28,000; six Mellon family members contributed $59,500 and nine Pew family members made a total contribution of $96,995.76. See appendix 8, Tabulation of Contributions by Prominent Family Groups, Senate Report No. 101, pages 140-151."

See also *House Minority Report No. 245, 80th Cong., 1st Session*, p. 111:

> "Such a restriction upon a voluntary association, a labor organization, composed of individuals of modest means, who by their very association with a labor organization demonstrate their inability to contribute large sums to an election fund, has little or no merit."

For further data on substantial political contributions of industrialists and their families, see *Sen. Rep. No. 47, 77th Cong., 1st Sess.*, and *Sen. Rep. No. 101, App. VIII, 79th Cong., 1st Sess.*

against unions' political "expenditures". We can only conclude that there was and is no basis for such a singling-out of labor organizations other than the motive of the proponents of the Act to silence those groups who most vociferously opposed the Act's passage. This is hardly a constitutional basis for discriminatory legislation.

III.

Section 304 fails to set forth an ascertainable standard of guilt, in violation of the Fifth and Sixth Amendments.

A statute making certain activity criminal must be sufficiently definite and certain to inform clearly those who are subject to its operation concerning the conduct on their part which will render them liable to its penalties. Failure of the law to set forth an ascertainable standard of guilt renders it constitutionally defective. [*Winters* v. *People of the State of New York, supra*, U. S. Sup. Ct., Mar. 29, 1948; *Thomas* v. *Collins, supra*, 323 U. S. 516; *Connally* v. *General Construction Company* (1926), 269 U. S. 385; *United States* v. *Cohen Grocery Co.* (1921), 255 U. S. 81.]

In *Winters* v. *People of the State of New York, supra*,[18] this Court reversed the conviction of a New York book dealer on the ground that the law under which he was convicted did not define the proscribed conduct with appropriate definiteness. In so holding, the Court stated that men of common intelligence cannot be required to guess at the meaning of a criminal enactment:

> "The standard of certainty in statutes punishing for offenses is higher than in those depending pri-

[18] Discussed *supra* under I, D, at pp. 13-14.

> marily upon civil sanction for enforcement. The crime 'must be defined with appropriate definiteness'. *Cantwell* v. *Connecticut*, 310 U. S. 296; *Pierce* v. *United States*, 314 U. S. 306, 311. There must be ascertainable standards of guilt. Men of common intelligence cannot be required to guess at the meaning of the enactment."

As a result of the vagueness of the law, said the Court, no one could adequately guard against its penalties:

> "'It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against.'"

In *Connally* v. *General Construction Company*, *supra*, 269 U. S. 385, this Court held unconstitutional a statute requiring a contractor, under penalty, to pay his employees "not less than the current rate of *per diem* wages in the locality where the work is performed". The Court, in so holding, stated that the law was not sufficiently explicit to inform contractors what conduct on their part would render them liable to its penalties (269 U. S., at p. 391):

> "That the terms of a penal statute creating a new offense must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties is a well recognized requirement, consonant alike with ordinary notions of fair play and the settled rules of law; and a statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application violates the first essential of due process of law * * *."

Even higher standards of definiteness and certainty in the language of criminal statutes have been imposed by this Court, where the effect of the statutory vagueness is to restrict the basic freedoms of speech and press. In *Winters* v. *People of the State of New York, supra,* for example, this distinction was pointed out by the Court as follows:

> "This Court goes far to uphold state statutes that deal with offenses, difficult to define, when they are not entwined with limitations on free expression. We have the same attitude toward federal statutes."

Most apropos to the case at bar in this connection is the case of *Thomas* v. *Collins, supra,* 323 U. S. 516, where the statute prohibited union "solicitation" unless the union representative first registered with the Secretary of State. In that case the state sought to sustain the law on the ground that it did not bar the free expression of opinion but barred solicitation only. The difficulty of drawing a line between "solicitation" and mere opinion in that case, is comparable to the difficulty in the case at bar of drawing a line between activity in connection with an election and activity not in connection with an election. The Court in the *Thomas* case held the statute invalid on the ground that it was so beclouded with uncertainty that a union speaker could never be sure, even when he was merely advocating adherence to union philosophy in the abstract, that he was not "soliciting". The Court said in this connection (323 U. S. 516, at p. 535):

> "Such a distinction offers no security for free discussion. In these conditions it blankets with uncertainty whatever may be said. It compels the speaker to hedge and trim. He must take care in every word to create no impression that he means, in advocating unionism's most central principle,

> namely, that workingmen should unite for collective bargaining, to urge those present to do so. The vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely. The effort to observe it could not be free speech, free press, or free assembly, in any sense of free advocacy of principle or cause. The restriction's effect, as applied, in a very practical sense was to prohibit Thomas not only to solicit members and memberships, but also to speak in advocacy of the cause of trade unionism in Texas, without having first procured the card."

Under the most ordinary standards of "vagueness", therefore, Section 304 should, we submit, be held unconstitutional as failing to prescribe an ascertainable standard of guilt. And, as we have shown, mere "ordinary" standards are not applicable to a statute such as this one, whose purpose and effect are to invade the freedoms of speech and press.

The impossibility of determining what is activity "in connection with" an election has already been demonstrated, and is self-evident in the words themselves.[19] What would constitute a proscribed "expenditure" is similarly tinged with doubt. When the two concepts are conjoined, as they are in Section 304, they create a possible area of criminal conduct so vast and nebulous as to nullify the political activity of labor organizations completely.

The confusion which existed and exists among the very legislators who enacted the Section, as to what activities are prohibited by it, demonstrates the complete injustice of requiring the lay public to know, at its peril, whether or not it is violating the law. Senator Taft has stated

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[19] See footnote 8, *supra*, p. 13.

that union newspapers that are supported by subscriptions from the membership are not covered by Section 304, whereas if they are supported by union dues they are covered. And if a union paper is supported by "earmarked" portions of dues it does not fall under the statutory ban, according to the Senator, provided the paper is "so to speak a going concern". As to the commercial press, Senator Taft excludes it from the operation of the law if its funds are derived from "running the newspaper as a business" and not from "corporate funds"; and he further states that in no event may it put out a pamphlet or a "special" newspaper.[20]

Senator Ball has stated for the press that Section 304 was not intended to interfere with "bona fide" union publications, and that it is only aimed at "excessive" use of union dues for distribution of "extra" editions or "extra" copies of "campaign diatribes" in a particular area against a particular person. He stated further that the Section is effective "only during political campaigns".[21]

Representative Hartley, co-sponsor of the Act, on the other hand, has stated publicly that all union newspapers are free, under Section 304, to editorialize on elections, and that if his interpretation is incorrect he is willing to have the Act amended.[22] Indeed, Senator Taft has recently conceded that Section 304 "might be ambiguous", but for some unexplained reason he is opposed to altering or amending the provision before 1949.[23]

Apart from the ambiguity of the statute on its face, therefore, we submit that the evidence is overwhelming that Section 304 is vague and indefinite and sets forth no

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[20] See debate in *93 Cong. Rec., Sen.*, June 5, 1947, pp. 6593-97. A paraphrase of this debate would be only a futile attempt to depict the multiplicity of vexatious problems raised in the minds of the Senators concerning the operation of Section 304.

[21] *N. Y. Times*, Sept. 7, 1947, p. 5, cols. 5-6.

[22] *N. Y. Herald Tribune*, July 16, 1947, p. 1, col. 3.

[23] *N. Y. Herald Tribune*, Feb. 26, 1948, p. 2, col. 5.

ascertainable standard of guilt. For this reason, we submit this Court should declare it invalid under the Fifth and Sixth Amendments to the Federal Constitution.

Conclusion.

Section 304 is thus an undisguised attempt to silence the voice of labor. With unblushing arrogance, the very legislators who owe their position to the political preferences and activity of the electorate have sought to take away from that electorate their right to remove them from office. Of such stuff tyranny is born.

We say that Congress cannot thus immunize itself from political criticism; that Congress cannot pass a law which threatens the very life of labor and in the same law thrust a gag into labor's mouth to insure that the enactment will never be repealed and that no Congressional careers will be curtailed because of its passage.

A law such as this, which deprives labor of its legitimate political outlets, will moreover drive labor to greater reliance on its economic remedies. Surely this is not a result to be hoped for—but it is made inevitable by the law itself.

We are living in an era of hysteria and repressive legislation. It has been said of the process of democracy that the "pendulum has swung too far in one direction and now it is swinging back". If this is symbolic of democracy, we urge only this: at least let the pendulum continue to swing.

We therefore respectfully submit that this Court should declare Section 304 invalid as an unwarranted and uncon-

stitutional invasion of the freedoms and rights protected by the First, Fifth and Sixth Amendments to the Constitution.

IV.

The determination of the lower Court should be affirmed.

Respectfully submitted,

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